



**Regulation Review Committee  
Parliament of New South Wales**

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**Report on the  
Education Amendment  
(Home Schooling) Regulation 1998**

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**Report No 17/51  
November 1998**

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## **Regulation Review Committee**

### **Members:**

Mr D Shedden MP (Chairman)  
Hon J Saffin MLC (Vice Chairman)  
Ms D Beamer MP  
Mr R Harrison MP  
Dr E Kernohan MP  
Mr P Lynch MP  
Mr R Oakeshott MP  
Hon J Ryan MLC  
Mr I Slack-Smith MP

### **Secretariat:**

Mr J Jefferis BA LLB, Director  
Mr G Hogg Dip Law (BAB) Dip Crim, Project Officer  
Mr D Beattie, Committee Clerk  
Ms H Parker BA, Research Officer  
Ms M Tyrogalas, Assistant Committee Officer

## **Functions of Regulation Review Committee**

The Regulation Review Committee was established under the Regulation Review Act 1987. A principal function of the Committee is to consider all regulations while they are subject to disallowance by Parliament. In examining a regulation the Committee is required to consider whether the special attention of Parliament should be drawn to it on any ground, including any of the following:

- (a) that the regulation trespasses unduly on personal rights and liberties;
- (b) that the regulation may have an adverse impact on the business community;
- (c) that the regulation may not have been within the general objects of the legislation under which it was made;
- (d) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made;
- (e) that the objective of the regulation could have been achieved by alternative and more effective means;
- (f) that the regulation duplicates, overlaps or conflicts with any other regulation or Act;
- (g) that the form or intention of the regulation calls for elucidation; or
- (h) that any of the requirements of sections 4, 5 and 6 of the Subordinate Legislation Act 1989, or of the Guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation.

The Committee may, as a consequence of its examination of a regulation, make such reports and recommendations to each House of Parliament as it thinks desirable, including reports setting out its opinion that a regulation ought to be disallowed.

## **Chairman's foreword**

The Education Amendment (Home Schooling) Regulation 1998 was published in Government Gazette No. 132 on 11 September 1998. This regulation was disallowed by the Legislative Council on 20 October 1998.

The purpose of this report is to set out the details of the Committee's inquiry into the regulation which preceded that disallowance and to recommend those matters that should be addressed before any further regulation is made on the matter.

The Regulation Review Committee held a public inquiry into the regulation on 15 October 1998 and took detailed evidence from the Office of the Board of Studies and from home schooling parents.

The Committee examined whether the regulation trespassed unduly on personal rights and liberties, whether it was within the general objects of the legislation under which it was made and accorded with the spirit of that legislation, whether the objective of the regulation could have been achieved by alternative and more effective means and whether the requirements of section 4 of the Subordinate Legislation Act 1989 or of the guidelines and requirements in Schedule 1 to that Act had been complied with.

While the Committee was satisfied as to the legality of the regulation, the evidence presented to the Committee shows that there was a failure to properly consult on the regulation and to assess it as required by Schedule 1 of the Subordinate Legislation Act 1989. There was no clear costing of the regulation or effective examination of alternative options.

Evidence presented on behalf of the Office of the Board Studies showed a lack of understanding of the Minister's obligations under the Subordinate Legislation Act. It was repeatedly asserted that the consultation that took place between 1991 and 1996 on the administrative guidelines was sufficient consultation on the regulation. This is clearly not the case under the Subordinate Legislation Act which states that in determining whether and how the objectives of the regulation should be achieved, administrative decisions should be based on adequate information and consultation concerning the need for and consequences of the proposed action. No such consultation took place on the regulation before it was made.

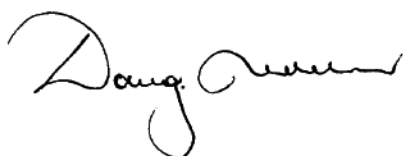
The Committee was accordingly of the view that the procedures that the Department followed in making this regulation did not comply with the Subordinate Legislation Act.

At the conclusion of the meeting of 15 October 1998, the Committee resolved as follows:

That, whilst accepting the necessity for regulations relating to home schooling, the Education Amendment (Home Schooling) Regulation 1998 be repealed and redrafted after adequate consultation and assessment have been carried out in conformity with the requirements of the Subordinate Legislation Act.

On the basis of the Committee's examination of the regulation and on the evidence presented to it during the inquiry, the Committee favours the making of a regulation in regard to home schooling. That view will need to be weighed up during the process of the assessment now to be undertaken. That assessment of any new regulatory proposal must address a number of options ranging from the mandatory "do nothing" option through the minimal intervention option preferred by the home schooling parents to the option of making a statutory rule incorporating provision for the testing of home schooled children. In view of the extensive public interest in this matter, the Minister should consider tabling in Parliament the assessment of any proposal for a new regulation on home schooling.

I express my appreciation to those members of the public and departmental staff who took time to prepare submissions on the various issues and to attend and give evidence before the Committee.

A handwritten signature in black ink, appearing to read "Doug Shedden". The signature is fluid and cursive, with a large initial 'D' and a long, sweeping underline.

Doug Shedden MP  
Chairman  
Regulation Review Committee

## **Recommendations**

1. That, in formulating the objectives of any proposal for a new regulation on home schooling, the Minister should ensure that the objectives are consistent with the spirit and objects of the enabling Act and with other legislation. Concurrent guidelines should be consistent with the regulation.
2. That, in carrying out the assessment of any proposal for a new regulation on home schooling, all alternative options which can wholly or substantially meet the objectives of the regulation should be identified and evaluated in terms of their respective costs and benefits and compared with the costs and benefits of proceeding with the regulation. These options must include the mandatory option of not proceeding with any action.
3. That, in order to discharge the Minister's responsibility under Schedule 1 in respect of any proposal for a new regulation on home schooling, appropriate consultation should be undertaken with those members of the public and relevant interest groups upon whom the regulation will impact. The extent of that consultation should be commensurate with the likely impact on those persons and groups.
4. That, in carrying out the assessment of any proposal for a new regulation on home schooling, the impact on the personal rights and liberties of home schooling parents and the community in general be assessed in accordance with section 4, Schedule 1 of the Subordinate Legislation Act 1989.
5. That any new regulatory proposal on home schooling which specifies the time to be spent teaching, be the subject of appropriate advice from Parliamentary Counsel as to its compliance with section 14 (4) of the Education Act 1990.
6. That any new regulatory proposal that requires the provider to demonstrate commitment to home schooling be drafted as a condition expressly requiring a continuing commitment.
7. That, in carrying out the assessment of any proposal for a new regulation on home schooling, the Minister demonstrate that he has in place adequate arrangements to ensure that persons are only appointed as authorised persons if they have adequate training, qualifications and experience to perform their duties.
8. That, in carrying out the assessment of any proposal for a new regulation on home schooling, the costs and benefits of current requirements relating to the keeping of records be assessed in the light of the issues raised in the course of the inquiry.

9. That the assessment of any proposal for a new regulation on home schooling should include an evaluation of whether provision should be made for home schooled children to have access to basic skills testing and to the grant of School Certificates.
10. That, in carrying out the assessment of any proposal for a new regulation on home schooling, the assessment specifically deal with the claim that provisions relating to the registration requirements of non-government schools are being inappropriately adapted to home schooling.



**Education Amendment (Home Schooling) Regulation 1998,  
published in Government Gazette No. 132, dated 11 September  
1998 at page 7358.**

## **Background**

Division 6 of Part 7 of the Education Act 1990 makes provision for the registration of children for home schooling as an alternative to enrolment at a government or registered non-government school. Under section 22 of the Act it is an offence for a parent of a child above the age of 6 or below the age of 15 to fail to provide for one of these forms of education for the child.

The Office of the Board of Studies has been developing and applying administrative guidelines for registration for home schooling for a number of years. Recently a decision was made to convert these guidelines into a regulation. The regulation prescribes the matters to be addressed in the conditions for the registration of a child for home schooling.

Before it initially considered this regulation the Committee received unsolicited written submissions on the regulation from Ms V Gibbs, Mr G and Mrs T Stevens, Dr J Boxx, Mr A Hardy, Mr T and Mrs M Richardson and Ms R Morningstar. Among other things, these questioned the validity of the regulation and the consultation that took place with home schooling parents before the regulation was made.

At its meeting of 24 September 1998 the Committee resolved in accordance with Section 11 of the Regulation Review Act 1987 to write to the Minister for Education and Training and the persons who had made the submissions asking them to give evidence on this regulation and the submissions at the Committee's meeting on Thursday 15 October 1998. The Committee also resolved to invite any other persons who subsequently made a submission on the regulation to attend the meeting and observe the proceedings.

The Minister nominated Mr John Ward, General Manager, Mr Robert Randall, Director of Curriculum and Mr David Murphy, Director of Finance and Administration, Office of the Board of Studies, to give evidence on the operation of the Act and Regulation as they apply to home schooling and to respond to the submissions. The Office of the Board of Studies made a submission to the Committee on behalf of the Minister on 8 October 1998.

The Committee at its meeting on Thursday 15 October 1998 examined the regulation in accordance with its terms of reference under section 9 of the Regulation Review Act and in particular whether the regulation trespassed unduly on personal rights and liberties, whether it was within the general objects of the legislation under which it was made and accorded with the spirit of that legislation, whether the objective of the regulation could have been achieved by alternative and more effective means and whether the requirements of section 4

of the Subordinate Legislation Act 1989 or of the guidelines and requirements in Schedule 1 to that Act had been complied with.

Among other things these require that before a statutory rule is made:

- The objectives sought to be achieved and the reasons for them must be clearly formulated.
- Alternative options for achieving those objectives (whether wholly or substantially), and the option of not proceeding with any action, must be considered.
- An evaluation must be made of the costs and benefits expected to arise from each such option as compared with the costs and benefits (direct and indirect, and tangible and intangible) expected to arise from proceeding with the statutory rule.
- The Schedule also states that administrative decisions should be based on adequate information and consultation concerning the need for and consequences of the proposed action.

These must be distinguished from the requirement for the preparation of a formal regulatory impact statement that applies to principal statutory rules. "Principal statutory rule" means a statutory rule that contains provisions apart from direct amendments or repeals and provisions that deal with its citation and commencement. This regulation did not require a formal regulatory impact statement because it was an amending regulation.

## **Terms of the regulation**

The regulation inserts the following new clause into the principal regulation:

### **6A Registration for home schooling**

- (1) For the purposes of section 73 (2) (a) of the Act, the requirements with which the conditions for the registration of a child for home schooling must comply are as follows:
  - (a) the following must have the written approval of the Minister, which may be given after considering the advice of an authorised person:
    - (i) the teaching and learning programs for the child, and
    - (ii) the educational facilities and equipment for the child, and
    - (iii) the premises where the child is to receive home schooling as regards light, ventilation and general suitability for the purposes of home schooling,
  - (b) the provider of the home schooling must be able to demonstrate to an authorised person the provider's commitment to undertake home schooling for the child,
  - (c) the time spent teaching the child must be sufficient to allow coverage of the body of work that could be undertaken by a student in public schooling of comparable ability and at a comparable stage of development attending class for 5 hours daily for 200 days each year,
  - (d) the provider of the home schooling must maintain a record of the time spent by the child on the teaching and learning programs referred to in paragraph (a), including a record of the child's achievement and progress in the key learning areas,
  - (e) the provider of the home schooling must make available, on request by an authorised person, the records required to be kept under paragraph (d), including, if so requested, any such records that relate to past periods of home schooling.
- (2) In this clause, authorised person has the same meaning as in section 70 of the Act.

## **Assessment under Schedule 1 of the Subordinate Legislation Act**

### **a. Formulation and checking of the objectives (Clause 2 (a) and (b), Schedule 1)**

The initial matters to be addressed in the assessment of a proposal for a regulation under Schedule 1 are the formulation of its objectives and the reasons for them and checking to ensure their consistency with their enabling Act and other legislation and policies.

It appeared to the Committee that the relationship between the Office of the Board of Studies' guidelines and the regulation had not been thought out properly before the regulation was made.

The Board's submission stated that the regulation would codify the guidelines in a legally enforceable form. However, it emerged in the course of the Board's evidence that the guidelines would continue in tandem with the regulation.

This issue arose as follows:

*Committee Member : Mr Ward, might I just interrupt and say, if you are now intending to have the regulation, why do you keep referring to the guidelines as though they exist? Is it your intention to have them still existing in tandem with the regulation?*

*Mr Ward: The guidelines exist as the elaboration of the regulation, so there will still be guidelines.*

*Committee Member: But the regulation and the guidelines, both of them, even though you have said that the regulation is the same as the guidelines?*

*Mr Ward: It is a support document.*

*Chairman: Why do you not incorporate them by reference?*

*Mr Ward: It is a support document, Mr Chairman, and is a service to parents to enable them to understand the sorts of detail and the examples that may, for example, take the form of the records they could keep.*

The Committee believes that duplicating the requirements in this manner can only serve to confuse the parents and may create legal difficulties in interpreting the two instruments if they are not properly drafted to take account of one another.

**Recommendation 1:** That, in formulating the objectives of any proposal for a new regulation on home schooling, the Minister should ensure that the objectives are consistent with the spirit and objects of the enabling Act and with other legislation. Concurrent guidelines should be consistent with the regulation.

**b. Identification of alternative options for achieving the objectives and evaluation of their costs and benefits as compared with the proposed regulation (Clause 2 (c), Schedule 1)**

Specific alternative options for achieving the objectives are required to be considered.

It was not clear to the Committee that the alternative options which were identified in the annexures to the Board's submission were assessed in terms of their comparative costs and benefits before the regulation was made. These alternatives concerned the different practices adopted by other states with respect to home schooling and recommendations of home schooling parents as to a simplified form of assessment of applications for registration under the regulations. Other relevant options that should have been considered were the "do nothing" option, as this is a mandatory requirement of clause 2 (c), Schedule 1 and the option of testing home schooled children, in order for the State to discharge its statutory responsibility to ensure the highest quality of education for every child under section 4 (c) of the Education Act.

On the issue of the costing of options, it was stated in the Board's submission that there would not be any additional cost to the community arising from this regulation and that it is only a machinery provision.

However clause 2 (d), Schedule 1 of the Subordinate Legislation Act requires the total costs and benefits of the regulation and its alternatives to be assessed, not merely the marginal costs and benefits of the change from the guidelines to the regulation.

As these total costs and benefits of the regulation were not assessed it was impossible for the Board to satisfy the requirements of clause 3 (b), Schedule 1, which provide that implementation by means of a statutory rule should not normally be undertaken unless the anticipated benefits to the community from the proposed statutory rule outweigh the anticipated costs to the community, bearing in mind the impact of the proposal on the economy and on consumers, members of the public and relevant interest groups.

Clause 3 (c), Schedule 1, also provides that the alternative option that involves the greatest net benefit or the least net cost to the community should normally be

chosen from the range of alternative options available to achieve the objectives. The potential impact on home schooling parents of moving from guidelines to a regulation was referred to by Mr Hardy as follows: *As guidelines you can have flexibility. This has been our viewpoint on this whole scenario. People want to home educate their child. They are up against the big bad bureaucrat. They know they have to get through this process. They look at the twaddle that is in there. They say, "Okay, we are going to assent to it."*

*The guidelines in response are enforced only loosely. That is the nature of guidelines. When you turn the rules of the tea room to law they have a lot more force, and it is our concern that those rules can be used, as someone indicated from here a bit earlier, in the way that they are worded in a way that could be quite severe on us.*

The Committee concludes that there was no clear costing of the regulation or effective examination of alternative options before it was made.

**Recommendation 2:** That, in carrying out the assessment of any proposal for a new regulation on home schooling, all alternative options which can wholly or substantially meet the objectives of the regulation should be identified and evaluated in terms of their respective costs and benefits and compared with the costs and benefits of proceeding with the regulation. These options must include the mandatory option of not proceeding with any action.

**c. Information and consultation concerning the need for the proposed action (clause 3 (a), Schedule 1)**

One of the principles the Minister must consider is that, in determining whether and how the objectives of the regulation should be achieved, administrative decisions should be based on adequate information and consultation concerning the need for and consequences of the proposed action.

In evidence the parents said they were not informed of the regulation before it was made.

The Board said that consultation had taken place on the guidelines from 1991 up to 1996 and that the regulation does nothing more than put the guidelines in a legislative form.

Mr Ward said that in April 1998 the Office had not taken a final decision to recommend the making of a regulation. It was listening and still gauging the need and consequences of this approach. By August 1998 the Office believed the circumstances were tending towards the need to make a regulation. He said that

he advised the August 1998 consultative meeting with home schoolers that the Office was now considering this course.

The issue of the need for consultation on the specific regulation was put to Mr Ward by a Committee Member as follows: *It is one thing to have them as guidelines, and you would accept that some people might accept something as a guideline but they may have a different reaction to something which is flexible like guidelines when it becomes a law. When you change the status of it do not you have an obligation, like every other government department does, to circulate that regulation and ask people to comment on it?*

*Mr Ward: We certainly complied with the regulations of the State of New South Wales, and it was our clear belief that the guidelines and the consultation that has surrounded the guidelines since 1991 met the requirement for consultation around the regulation. There may be a view otherwise, but that was our view.*

The home schooling parents took a different view of the consultation on the regulation. A Committee member put the following question: *In the meetings that you have had that you said you have been attending with the Office of the Board of Studies, how did you then find out that there was going to be a regulation? Did you find out at the meeting?*

*Mrs Stevens : A friend of ours who has a learning disabled child and is trying to protect her child from bullying at school and is under a lot of duress to send that child to school anyway has a friend in the Parliament here who noticed it in the Gazette. That is how we know about it.*

*Committee Member: By word of mouth?*

*Mrs Stevens: By chance. It was published a week later in the Gazette. We were at the meeting on 31 August and we asked direct questions about it, "Will these be regulations?" and we were told, "Perhaps we might consider making regulations."*

Evidence presented on behalf of the Office of the Board of Studies showed a lack of understanding of the Minister's obligations under the Subordinate Legislation Act. Mr Ward repeatedly asserted that consultation that took place between 1991 and 1996 on the administrative guidelines was sufficient consultation on the regulation. This is clearly not the case under the Subordinate Legislation Act which states that in determining whether and how the objectives of the regulation should be achieved, administrative decisions should be based on adequate information and consultation concerning the need for and consequences of the proposed action. No such consultation took place on the regulation before it was made.

Even if consultation on the guidelines were sufficient, in the face of the many submissions opposing the regulation which the Committee provided to the



Minister before its inquiry, the officers of the Board failed to produce any letters or submissions from home schooling parents or from the broader education community in support of the guidelines. The Officers took the fact that most of the 900 home schooling parents complied with the guidelines as signifying that they were satisfied with the guidelines. This cannot be assumed, particularly in the light of the evidence of Mr Hardy on behalf of the Home Education Council of NSW who indicated that 450 of the Council's affiliates opposed the regulation.

The importance of adequate consultation was demonstrated by the comments of some witnesses which showed there would be a far greater willingness to accept guidelines or regulations if they were developed by appropriate people after proper consultation and fair consideration of alternative options (evidence of Mrs Stevens and Mr Hardy).

**Recommendation 3:** That, in order to discharge the Minister's responsibility under Schedule 1 in respect of any proposal for a new regulation on home schooling, appropriate consultation should be undertaken with those members of the public and relevant interest groups upon whom the regulation will impact. The extent of that consultation should be commensurate with the likely impact on those persons and groups.



## Trespass on personal rights and liberties

A number of the submissions argued that the regulation trespassed unduly on personal rights and liberties. For instance, Mr Hardy said the regulation substantially limited the freedom of members of the public who elected to educate their children. He said it limited the manner in which the requirements of the Act could be fulfilled; it restricted home schoolers to a particular style of education and imposed formalities which he argued were unnecessary in the home schooling environment. The evidence and submissions showed that a number of home schoolers were unwilling to recognise the role that the Minister is required to perform under the legislation.

In his evidence Mr Ward said that most of the 900 home schoolers have accepted the requirements expressed in the guidelines for many years, but that there are a small number of home schooling families who have questioned the legitimacy of the guidelines and, in general, the opposition to the guidelines is based on the belief that the State should play a minimalist, if not non-existent, role in the education of these children. In his evidence Mr Hardy indicated that some 450 affiliates of the Home Education Council of New South Wales opposed the regulation.

An object of the Education Act is to ensure that an adequate education is secured by proper controls for home schooled children. Although parents have the primary responsibility for the education of their children, the Act imposes a duty on the State to ensure the child receives an education of the highest quality.

The Act specifically authorises the imposition of conditions on registration for home schooling and requires those conditions to comply with the requirements of the regulations. The Act also says that subject to any such regulations, the conditions must provide for the child to receive instruction that meets the relevant requirements of Part 3 relating to the minimum curriculum for schools.

Some submissions suggested that the regulation enabled entry into homes to inspect premises for compliance. However the regulation does not do this. Section 74 of the Act authorises the Minister to cancel the registration if the parent has refused the authorised person entry but there is no express power to enter prior to registration to report on the application. Section 70 defines "Authorised Person" as including a Board inspector and Section 104(1) enables Board inspectors to exercise such functions as the Board may specify in connection with approvals and registration under Part 7.

**Recommendation 4:** That, in carrying out the assessment of any proposal for a new regulation on home schooling, the impact on the personal rights and liberties of home schooling parents and the community in general be assessed in accordance with section 4, Schedule 1 of the Subordinate Legislation Act 1989.

## **Whether the regulation is legally made within the objects of the Act**

A number of the submissions to the Committee argued that the conditions and guidelines that applied to home schooling were invalid and that the regulation must be similarly in doubt.

On being asked whether he could clarify the matter, Mr Ward said: *The Office has a general policy of procuring legal advice for guidance in the execution of statutory power and in circumstances that may result in litigation. In this way, the Office can ensure as a matter of routine, and as a matter of routine gains the assurance, that it is acting lawfully. That is a responsibility and part of my role as CEO of a government agency.*

*That said, I would be concerned about revealing any specific instances of the Office having received legal advice, given that my releasing any advice in this forum may involve the Office waiving the legal professional privilege attached to such advice, but I would assure you that I have no doubt about the legality of the guidelines in terms of the Act and, hence, the legality of the regulation.*

Section 73 of the Act states that the registration of a child for home schooling is subject to the conditions specified in the certificate of registration and that the conditions so specified: (a) must comply with the requirements of the regulations; and (b) subject to any such regulations, must provide for the child to receive instruction that meets the relevant requirements of Part 3 relating to the minimum curriculum for schools.

Section 130 authorises regulations to be made, not inconsistent with the Act, with respect to any matter that is required or permitted to be prescribed. The Committee is satisfied that these provisions authorise regulations to be made for the purpose of prescribing requirements that have to be complied with in the conditions imposed on registration for home schooling. The legality of the regulation made on 11 September 1998 was not affected by the Department's failure to comply with Schedule 1 of the Subordinate Legislation Act (see section 9 of the Subordinate Legislation Act). The making of the regulation was supported by a certificate from the Parliamentary Counsel that it could legally be made.

In the course of debate on the disallowance motion the Attorney General gave the reason for the making of the regulation. He said that legal advice had been given that it was desirable for regulations to be made in this area so that the registration process is open and transparent (Legislative Council, 20 October 1998).

The following related issues arose in the course of the inquiry.

- a. The Board's officers indicated that the guidelines will continue to apply even though a regulation substantially duplicates them. The Committee is concerned that this may create legal difficulties in interpreting the two

instruments if they are not properly drafted to take account of one another. This issue is addressed in Recommendation 1.

- b. Some submissions argued that because Clause 6A(1)(c) of the regulation specifies the time to be spent teaching, this does not comply with Section 14(4) of the Act which provides that any syllabus must not make a specific period of time for teaching mandatory.

**Recommendation 5:** That any new regulatory proposal on home schooling which specifies the time to be spent teaching, be the subject of appropriate advice from Parliamentary Counsel as to its compliance with section 14 (4) of the Education Act 1990.

- c. Submissions also argued that Clause 6A(1)(b) anticipates the requirement for the authorised person to advise the Minister on each application for registration under section 71 of the Act because it states that "the provider of the home schooling must be able to demonstrate to an authorised person the provider's commitment to undertake home schooling for the child".

Although this is framed in the form of a condition precedent to registration as the words "commitment to undertake" indicate, the Committee considers it appropriate for conditions to require an ongoing commitment.

**Recommendation 6:** That any new regulatory proposal that requires the provider to demonstrate commitment to home schooling be drafted as a condition expressly requiring a continuing commitment.

## **Compliance with the spirit of the enabling Act**

Even if the regulation is legally made under the Education Act, the Committee has to determine whether it accords with the spirit of that Act. Section 4 of the Education Act states that in making the Act, Parliament had regard to four principles :

- (a) every child has the right to receive an education;
- (b) the education of a child is primarily the responsibility of the child's parents;
- (c) it is the duty of the State to ensure that every child receives an education of the highest quality;
- (d) the principal responsibility of the State in the education of children is the provision of public education.

The Board submitted that these principles had to be read conjunctively and that one principle, such as the responsibility of the parents, could not be seen as overriding the others. Mr Ward said *“These principles do not operate to the exclusion of each other. It is just not correct to say that they can be seen in isolation. They operate together. I believe it is an absurd proposition that parents have sole rights in this regard which exclude the State from ensuring that parents are fit and proper persons to undertake the task of home schooling their children. Such an approach reduces children to mere chattels of their parents, with the State meekly abrogating its duty to look at the welfare of children in the pivotal area of their right to an education of the highest quality”*.

The home schooling parents on the other hand believe that in the making of the regulation, greater weight was given to the State's responsibilities.

In Recommendation 1, the Committee said that in formulating the objectives of any proposal for a new regulation, the Minister should ensure that they are consistent with the spirit and objects of the enabling Act and with other legislation.

## **Fitness of authorised persons to advise Minister**

Dr Boxx in her submission challenged the competency of authorised persons to advise on pre-conditions to registration; that is, on the teaching and learning programs of the child, the educational facilities, the premises and the provider's commitment to undertake home schooling for the child.

In her submission she asked: "Are these authorised persons building inspectors, illumination experts, health and safety code inspectors? Just what is the wattage or light amps required for 'the purposes of home schooling'? Oh please! All such rubbish is, as has already been addressed in both my appeals, nothing more than the personal opinions of someone wearing the hat of Authorised Person".

Under section 70 of the Act, "authorised person" means an inspector of the Board of Studies or a person authorised by the Minister to perform the functions of an authorised person.

The submissions to the Committee showed there was considerable animosity by some home schoolers against the manner in which authorised persons performed their duties. This included claims of unfairness and discrimination. Ms Gibbs, in her submission, claimed that inspectors had exercised their powers in such an objectionable way that she would not allow them to enter her home again.

The Committee does not have evidence as to the correctness of these assertions. However, in the interests of transparency, the Minister should put in place suitable clear arrangements governing his appointment of authorised persons.

**Recommendation 7:** That, in carrying out the assessment of any proposal for a new regulation on home schooling, the Minister demonstrate that he has in place adequate arrangements to ensure that persons are only appointed as authorised persons if they have adequate training, qualifications and experience to perform their duties.

## **Requirement to keep records**

The regulation stated that the provider of the home schooling must maintain a record of the time spent by the child on the teaching and learning programs, including a record of the child's achievement and progress in the key learning areas. These records must be made available on the request of an authorised person.

Several of the submissions made to the Committee claimed these requirements were too onerous. Mr Ward said that the purpose of these provisions was to ensure that the child's educational achievement and progress was monitored in a systematic way.

In the following exchange, a member of the Committee raised several concerns about the operation of the record requirements which should be examined by the Department.

*Committee Member: Can I just go back to get an answer to the question I asked, which is: why is a record of time spent used as a measure? The reason I ask this question is that I imagine it is going to be put to us later by other witnesses that one way of measuring whether the kids are spending enough time on a particular subject would be to look at samples of their work and say, "If the kid is writing half a dozen essays in the course of a study of history at high school, that is probably as valid a means of measuring whether they are spending enough time on something as opposed to whether they have a record of the time taken to do those things."*

*Mr Ward: The time has been developed as part of the guidelines, and it is a guide to a comparable stage of development of attending class for five hours daily for 200 days each year. It is saying that the time spent must be sufficient to allow coverage of the body of work that would be undertaken in public schooling of comparable ability and at a comparable stage of development attending class for five hours daily for 200 days each year.*

*That is an indicative amount of time only, but it is the outcome that is measured, and it is simply saying that the State has a responsibility to ensure an education of the highest quality. It is saying that that is the amount of time that is spent for a child who is attending school to achieve these outcomes but the time spent must be sufficient to allow coverage of the body of work that could be undertaken by a student. It is coverage of the body of work and it is the time spent that enables that to happen.*

*Committee Member: Mr Ward, you sound to me like you are going to implement this regulation in a perfectly reasonable manner.*

*Mr Ward: I believe we are.*



*Committee Member: My concern, though, is that this regulation does give an administrator later down the track the capacity to say, "This regulation says you have to keep a record of the time spent by each child, and unless you have this record you will not be able to get registration."*

*You would not have to change one letter of this regulation in order to impose that regime as a pre-condition for home schooling. Under the guidelines it is fairly obvious you could not do that, but under this regulation you really could. You would not have to change one paragraph of this in order to make that a pre-condition, and I guess the concern is that maybe the regulation says more than it really needs to say.*

*Mr Ward: The regulation, with respect, does not say more than it needs to say. It reinforces and gives form to the existing situation; it does not add to the existing situation as contained in the guidelines; it simply does, as the Act enables there to be requirements of regulation, but we have been very careful not to move with the regulation, and we have done that deliberately, outside the existing guidelines, which have been accepted and are accepted by the bulk of 900 families across New South Wales.*

Mrs Stevens in her evidence argued that, as an alternative to schools, they should not be put under the same provisions as a registered non-government school that practised mass schooling. She said they should not have to keep copious records relating to each child.

Ms S Krawczyk in her submission (23 September 1998) argued that:

[The requirements of the regulation] have been formulated from a classroom management perspective, with no real insight into how Home Education works... The purpose of record keeping in schools is to monitor progress of 30-200 individuals simultaneously. Written records are essential if the teacher is to develop appropriate programs for their many students. Records also serve the important function of keeping the parents informed of their child's progress and assures them that the teacher is doing their job. Home educators do not require to keep detailed records. They know their children very well and can usually keep track of their development.

Another concern was the length of time that records should be kept. The regulation placed no time limit on record keeping while the guidelines stipulate that records should be kept for a period of two years after the registration period expires.

**Recommendation 8:** That, in carrying out the assessment of any proposal for a new regulation on home schooling, the costs and benefits of current requirements relating to the keeping of records be assessed in the light of the issues raised in the course of the inquiry.

## Access to testing

It was the view of some parents who wrote to the Committee that home schooled children should have access to basic skills tests and the School Certificate.

Mrs Stevens outlined the problems home schooling parents face in obtaining an external assessment:

*Committee Member: ... Some home school people have a thing against examinations for comparative purposes at any stage. Do you or do you not think that the State has any rights to assess the efficacy of home education at some stage?*

*Mrs Stevens: We have many parents who wish to access numeracy and literacy tests, and who have difficulty. One parent just had to enrol her children in the school for three weeks so that her children could sit for the numeracy and literacy test without having to pay \$25 per child. It is terrible. We can access it if we pay. We can access the syllabuses for the HSC or the School Certificate or whatever if we pay for them. We cannot even go to a library and look them up.*

There is no provision in the Act or regulations that would allow home schooled children to have access to basic skills testing or to the grant of School Certificates. This situation should be examined to see whether it accords with the objectives of section 4 of the Act.

**Recommendation 9:** That the assessment of any proposal for a new regulation on home schooling should include an evaluation of whether provision should be made for home schooled children to have access to basic skills testing and to the grant of School Certificates.



## **Basis for regulations and guidelines**

A recurrent claim made in the submissions was that the content of the regulations and guidelines inappropriately drew on the registration requirements of the Education Reform Act relating to the registration of non-government schools. This is summed up in the statement made by Mrs Stevens at the inquiry:

*Mrs Stevens: ... the regulations and the guidelines are based upon the requirements for registration of non-government schools and they are a different part of the Act. They do not pertain to us and they are trying to apply another part of the Education Act on to us. That is basically what is happening.*

The same point is argued in detail in the submissions of Dr Boxx.

**Recommendation 10:** That, in carrying out the assessment of any proposal for a new regulation on home schooling, the assessment specifically deal with the claim that provisions relating to the registration requirements of non-government schools are being inappropriately adapted to home schooling.

## Submissions

- |    |                  |    |                                |
|----|------------------|----|--------------------------------|
| 1  | Ms V Gibbs       | 20 | Mr D Sylvester                 |
| 2  | Mr G Stevens     |    | Mrs D Sylvester                |
|    | Mrs T Stevens    | 21 | Ms K Walker                    |
| 3  | Dr J Boxx        | 22 | Ms B Hartingdon                |
| 4  | Mr A Hardy       | 23 | Office of the Board of Studies |
| 5  | Ms L Edwards     | 24 | Ms B Braathen                  |
| 6  | Mr T Richardson  | 25 | Mr J Clements                  |
|    | Mrs M Richardson |    | Mrs C Clements                 |
| 7  | Ms R Morningstar | 26 | Mr A Mollenhauer               |
| 8  | Mrs K Vines      |    | Mrs J Mollenhauer              |
| 9  | Mr F Forest      | 27 | Ms C Strange                   |
|    | Mrs R Forest     | 28 | Mr G Bates                     |
| 10 | Mr D Brodbeck    |    | Mrs M Bates                    |
|    | Mrs J Brodbeck   | 29 | Ms L Kendrick                  |
| 11 | Ms V Albanus     | 30 | Mrs M Vieira                   |
| 12 | Mr N Pullar      | 31 | Mr M Moawad                    |
|    | Mrs K Pullar     |    | Mrs I Moawad                   |
| 13 | Mrs K Spicer     | 32 | Mrs S Horwood                  |
|    | Mr C Glen        | 33 | Mrs A Daley                    |
|    | Mrs L Glen       | 34 | Mr G Taberner                  |
| 14 | Ms S Krawczyk    |    | Mrs M Taberner                 |
| 15 | Mr B Mettes      | 35 | Ms M Gale                      |
| 16 | Ms B Manning     | 36 | Ms K van Brunschot             |
| 17 | Mr D Winch       | 37 | Mr G Butler                    |
| 18 | Ms D Coppen      |    | Mrs I Butler                   |
|    | Mr T English     | 38 | Mr P Reefman                   |
| 19 | Ms T Emblen      |    |                                |

## **Witnesses**

- 1 Mr John Ward, General Manager, Office of the Board of Studies
- 2 Mr Robert Randall, Director of Curriculum, Office of the Board of Studies
- 3 Mr David Murphy, Director of Finance and Administration, Office of the Board of Studies
- 4 Mr Alan Downes, Home Schooling Parent
- 5 Mr Geoff Stevens, Home Schooling Parent
- 6 Mrs Toni Stevens, Home Schooling Parent
- 7 Mr Alan Hardy, Member, Home Education Council of New South Wales